

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

WILDEARTH GUARDIANS;  
WESTERN WATERSHEDS  
PROJECT,

Plaintiffs,

vs.

BNSF RAILWAY COMPANY;  
BURLINGTON NORTHERN SANTA  
FE LLC,

Defendants.

CR 23–152–M–DLC–KLD

ORDER

Plaintiffs have filed a Motion to Dismiss for Lack of Jurisdiction pursuant to L.R. 7-1 and Fed. R. Civ. P. 41(a)(2). (Doc. 33.) Through the Motion, Plaintiffs explain that on February 13, 2024, the U.S. Fish and Wildlife Service (“FWS”) approved a habitat conservation plan and issued to BNSF Railway Company (“BNSF”) an incidental take permit under the Endangered Species Act (“ESA”) covering train operations on approximately 206 miles of railroad right-of-way between Brimstone West, Montana and Shelby, Montana. (*Id.* at 2 (citing Doc. 33-1).) The permit is valid for seven years and authorizes incidental “take” of nineteen grizzly bears in that geographic region during that time period. (*Id.*) Plaintiffs

contend that because the gravamen of their injuries rest on the deaths of three grizzly bears struck by trains on BNSF tracks in 2023, the permit implicates this Court's subject matter jurisdiction. (*Id.*) Counsel for Defendants take no position on the motion. (*Id.*)

The parties previously filed a joint status report agreeing that Plaintiffs' claims are now moot. (Doc. 31.) In response to that status report, Magistrate Judge Kathleen L. DeSoto ordered that the parties file a stipulation to dismiss. (Doc. 32.)

Accordingly, IT IS ORDERED that the Motion (Doc. 33) is GRANTED. This case is dismissed without prejudice.

The Clerk of Court is directed to close this case.

DATED this 26th day of February, 2025.

  
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Dana L. Christensen, District Judge  
United States District Court